

Subject: RE: Following up
From: "Villatoro, Carlos@MBC" <Carlos.Villatoro@mbc.ca.gov>
Date: 3/29/19, 3:45 PM
To: 'Brad Racino' <bradracino@inewssource.org>

Brad,

Below are the Medical Board of California's responses to your questions. Let me know if you need anything further.

Question: How is the CMB made aware of allegations against doctors in California, other than through the formal complaint process? Is it as simple as a board member reading something in the paper? Does the CMB receive any adverse event reporting or similar disclosures from hospitals, academic institutions and/or private practices?

Response: The Medical Board of California (Board) receives complaints in a variety of ways, including the ones that you have mentioned. The Board receives complaints from patients, doctors, hospitals, social media, news articles, law enforcement, courts, consumer groups, webmaster email inbox, phone calls to the Board, death certificates, and through various Business and Professions Code mandated reports, including 805 reports. An 805 report is the mechanism in which peer review bodies, most commonly found in hospitals, are required to report specific information regarding licensees to the Board.

An 805 Report must be filed if one of the following actions occurs:

- A peer review body denies or rejects a licensee's applications for staff privileges or membership for a medical disciplinary cause or reason;
- A licensee's staff privileges, membership, or employment are revoked for a medical disciplinary cause or reason;
- Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a total of 30 days or more within any 12 month period for medical disciplinary cause or reason;
- If the resignation, leave of absence, withdrawal or abandonment of application or for renewal of privileges occurs after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason;
- A summary suspension of staff privileges, membership, or employment is imposed for a period in excess of 14 days.

In addition, an 805.01 report must be filed within 15 days after a peer review body makes a final decision or recommendation regarding disciplinary action following a formal investigation, which determines that one of the following have occurred:

- Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients, to the extent or in such a manner as to be dangerous or injurious to any person or to the public. This paragraph shall not be construed to affect or require the imposition of immediate suspension pursuant to Section 809.5.

- The use of, or prescribing for or administering to himself or herself, any controlled substance; or the use of any dangerous drug, as defined in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, any other person, or the public, or to the extent that such use impairs the ability of the licensee to practice safely.
- Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith effort prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain, consistent with lawful prescribing, be reported for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.
- Sexual misconduct with one or more patients during a course of treatment or an examination.

Here is a flow chart that explains the Board's enforcement process: http://www.mbc.ca.gov/Enforcement/enforcement_process.pdf

The Board's annual report lists all the mandated reporting categories and the numbers received in the last two fiscal years: http://www.mbc.ca.gov/Publications/Annual_Reports/annual_report_2017-2018.pdf.

Question: What is the "average" length of time it takes the CMB to decide if an allegation is substantiated, from the time the agency is alerted to final ruling?

Response: To answer this question, it is important that you understand the various steps of its enforcement process. Each complaint that the Board receives gets reviewed in the Board's Central Complaint Unit (CCU), which can take an average of 98 days ([according to the Board's 17-18 Annual Report](#)). During this time, the complaint is evaluated and prepared for further review, if warranted. For quality of care complaints, the CCU sends the complaint to a medical consultant who determines whether there is a departure and whether additional investigation is needed. Complaints involving egregious violations (drug/alcohol abuse, physician impairment – either mental or physical, sexual misconduct, overprescribing) are sent directly to a field office in the Department of Consumer Affairs' (DCA) Health Quality Investigation Unit (HQIU) for formal investigation. Quality of care complaints are sent to one of the Board's expert reviewers, who looks over the medical records and recommends further investigation in the field, at which point the complaint is assigned to DCA's HQIU for formal investigation. Most complaints are handled by the CCU and as stated previously are processed on average of 98 days.

All investigations are conducted by the DCA's HQIU, by sworn peace officers. The Board's [Annual Report for Fiscal Year 17-18](#) highlights enforcement timelines. If you have questions on the investigation process or timelines, please contact DCA's Office of Public Affairs at (916) 574-8170 or email at publicaffairs@dca.ca.gov. The current timeframe, as

stated in the annual report is 510 days for the investigation. If the investigation yields evidence that indicates a violation of the law has occurred and it can be proven by “clear and convincing” evidence, which is the burden of proof for Board cases, the findings are sent to the Attorney General’s Office for review and possible filing of an accusation (charging document). Here is a link to the [latest annual report](#) and [previous annual reports](#), which highlight the enforcement timelines. Once the case has been sent to the Attorney General’s Office, it takes approximately 63 days to file an accusation and 322 days for the time to prosecute the case, which could include a hearing at the Office of Administrative Hearings.

Please be advised that many of the timelines, including those for investigations, prosecution, and administrative hearings are outside the Board’s control.

Question: Does the CMB incorporate federal investigations into its public database in any way? Dr. Samuel Ho, for example, is [at the center](#) of a multi-pronged federal investigation involving the Office of Special Counsel, the VA Office of the Medical Inspector, the VA Office of the Inspector General, the Office of Human Research Protections and the Office of Research Integrity. None of that is reflected [on his CMB page](#). Is that typical?

Response: The Board’s database is not linked to any federal databases. Information on complaints and investigations are not included on the physician’s profile page because they are confidential by law. It is only after the Attorney General’s filing of an accusation that the allegations are made public and written into the accusation, which is the charging document. If the Board believes that an individual is an imminent danger to the public, it may petition an Administrative Law Judge for an Interim Suspension Order. If this petition is granted, the order is public and is posted on the Board’s website. Additionally, if the criminal court restricts the licensee’s practice of medicine, that is also public and can be posted. It is important to note that the Board can only post the information authorized by law on a physician’s profile. For a list of what is public information and what information is made available on a physician’s profile page, please visit: http://www.mbc.ca.gov/Consumers/public_disclosure.pdf.

Question: Does the CMB incorporate FDA warning letters or academic audits into its public database in any way? For example, we found [this FDA letter](#) regarding a doctor at UCSD, Kang Zhang. That letter prompted [a UC audit](#) that uncovered a number of additional research violations related to at least six research studies. Yet none of that is reflected [on his CMB page](#). Is that typical?

Response: The Board monitors FDA warning letters for possible violations and reviews all information included when it receives the warning letter alerts from the FDA. The Board reviews this information and will investigate and take action, as appropriate. The Board however, does not feature the warning letter on a physician’s profile page, as the Board’s database is not linked to any federal entities. The Board also does not post information regarding investigations and/or complaints (and any related investigatory documents) on the profile pages of the physicians as they are confidential by law. Please be aware that any information regarding a complaint that the Board obtains becomes part of the complaint and investigatory file and is confidential. Again, please see the law for what can and cannot be posted.

Question: Does the CMB investigate every allegation it receives? Is there a credibility test? How and when does the CMB decide not to look into an allegation?

Response: The Board reviews all information it receives from various sources, and any information the Board receives is considered a complaint. Some complaints require additional documents (i.e. medical records), criminal case documents, etc., in order for the Board to investigate further. All complaints are reviewed and processed, unless they are outside of the Board's jurisdiction.

Question: Would there be any reason for the CMB not to look into cases like the Zhang and Ho cases, if there were one?

Response: The Board is unable to provide information for this question, as all complaints and investigations are confidential by law.



Carlos Villatoro, *Public Information Officer II*
Medical Board of California - Executive Office
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Sacramento, CA 95815
916-263-2394 (desk)



From: Brad Racino <bradracino@inewssource.org>
Sent: Tuesday, March 26, 2019 11:21 AM
To: Villatoro, Carlos@MBC <Carlos.Villatoro@mbc.ca.gov>
Subject: Re: Following up

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Carlos,

We'll be devoting a lot of time toward the topic of human research in 2019 and a component of that coverage will be oversight. Federal, state, academic, institutional. CMB is one of the many agencies we're trying to better understand in that context. We're not working on a story about CMB in particular, but would most likely take from your responses and use them in future stories that talk about oversight and accountability.

No hard deadline, but I'd appreciate if you could get the responses to me within a week, if that's fair?

Thank you again for your help.

[Villatoro, Carlos@MBC](mailto:Villatoro.Carlos@MBC)

March 26, 2019 at 10:41 AM

Brad, thanks for the note and we will provide you some responses.
Can you tell me a little bit more about your story? What is your angle?
Also, please tell me your deadline.

Thank you,



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From: Brad Racino <bradracino@inewsource.org>
Sent: Monday, March 25, 2019 8:42 PM
To: Villatoro, Carlos@MBC <Carlos.Villatoro@mbc.ca.gov>
Subject: Following up

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Thank you again.

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BRAD RACINO | Senior Reporter & Assistant Director

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[Brad Racino](#)

March 25, 2019 at 8:42 PM

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